

The opinion in support of the decision being
entered today is not binding precedent of the Board.

Paper 20

Filed by: Trial Section Merits Panel
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

ALEXANDER KAMB,

Junior Party,
(Application 08/986,147),

v.

COLD SPRING HARBOR LABORATORY,

Senior Party,
(Patent 5,962,316 and 5,889,169).

Patent Interference No. 104,468

Before McKELVEY, Senior Administrative Patent Judge, and
SCHAFFER and LEE, Administrative Patent Judges.

PER CURIAM

MEMORANDUM OPINION and JUDGMENT

A. Background

Based on a showing made by Cold Spring Harbor Laboratory
(Paper 17), it was ORDERED that for purposes of 37 CFR

§ 1.608(b), (1) the effective filing date of U.S. Patent 5,962,316 is 18 November 1993 and (2) the effective filing date of U.S. Patent 5,889,169 is 18 November 1993 (Paper 18).

Kamb was ORDERED to either (1) present a showing under 37 CFR § 1.608(b) or (2) establish that it is entitled to the benefit for purposes of priority of an application with a filing date prior to Cold Spring Harbor Laboratory's effective filing dates of 18 November 1993 (Paper 2 at 11-12 and Paper 18 at 2).

On 13 January 2000, Kamb timely filed a paper stating that "[t]o date, a search of the appropriate records has not revealed evidence upon which Kamb can base either showing" (Paper 19). Since Kamb has neither presented a showing under § 1.608(b) nor established that it is entitled to any benefit of an application filed prior to 18 November 1993, Kamb has failed to comply with the requirements of § 1.608(b). Accordingly, judgment should be entered against Kamb.

B. Judgment

Upon consideration of the record of this interference, it is

ORDERED that judgment on priority as to Count 1 is awarded against Kamb;

FURTHER ORDERED that Kamb is not entitled to a patent containing claims 1, 2, 8, 18, 19, 26-29, and 33-35, (corresponding to Count 1) of application 08/986,147;

FURTHER ORDERED that, based on the record before us, Cold Spring Harbor Laboratory is entitled to a patent containing claims 1-16 and 18-29 of patent 5,889,169 and claims 1-13 and 15-40 of patent 5,962,316, all of which claims correspond to Count 1;

FURTHER ORDERED that a copy of this judgment be entered in the administrative file wrappers for (1) application 08/986,147, (2) patent 5,889,169 and (3) patent 5,962,316.

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FRED E. McKELVEY, Senior)	
Administrative Patent Judge)	
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RICHARD E. SCHAFER)	
BOARD OF PATENT		
Administrative Patent Judge)	APPEALS AND
)	INTERFERENCES
)	
)	

_____))
JAMESON LEE)
Administrative Patent Judge)

cc (via Fax and First Class Mail)

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